IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 63363-5-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
JIMMY DERRICK BIZZELL,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: April 26, 2010
	)	

Ellington, J. — Jimmy Bizzell contends that the trial court lacked authority to impose a new term of community custody four years after it imposed its judgment and sentence. But the court has authority to amend a judgment at any time to correct a clerical error, such as the sentencing oversight at issue in this case. We affirm.

FACTS

On January 21, 2005, the trial court sentenced Jimmy Bizzell to 57 months of confinement for one count of assault in the second degree and 60 months for one count of rape in the third degree, with the sentences running concurrently. The court also imposed a 36 to 48 month term of community custody for the sex offense. However, the judgment and sentence were silent regarding community custody for assault in the second degree, a violent offense.

On November 19, 2007, following remand, the court amended Bizzell's judgment and sentence to reduce the term of community custody because his total sentence exceeded the 60 month maximum for the rape offense. And on January 20, 2009, the court entered another order stating that its jurisdiction over the matter would end on March 26, 2009, which was five years from the date of his arrest. The question of whether Bizzell was required to serve an additional term of community custody for the assault conviction did not arise during these hearings.

On March 25, 2009, the day before Bizzell's term of confinement was to expire, the prosecutor moved to amend Bizzell's sentence by imposing 18 to 36 months of community custody under the assault conviction, as mandated by statute. The trial court agreed that this additional term of community custody was mandatory and that its omission from the original judgment and sentence was an oversight. It entered an order amending Bizzell's judgment and sentence accordingly. Based on this newly added term of community custody, Bizzell remained in prison for a previous violation of community custody. Bizzell appeals.

ANALYSIS

Bizzell argues that the trial court lacked authority to add a new term of community custody to his sentence four years after the original sentencing. We disagree.

Former RCW 9.94A.715(1) (2003) required the sentencing court to impose community custody automatically if the defendant has been convicted of a violent offense. Assault in the second degree is classified as a violent offense.[1] Thus,

Bizzell's original sentence was erroneous because it omitted the mandatory term of community custody for the second degree assault offense.

"A court has the authority to correct an erroneous sentence."[2] CrR 7.8(a) provides that "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own motion or on the motion of any party." To determine whether an error is "clerical" under CrR 7.8(a), we consider "'whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial."[3] If so, then the amended judgment appropriately corrected the inadvertent error or omission.[4] On the other hand, "[a]n intentional act by the court cannot be a clerical error."[5]

Here, the record indicates that this was an inadvertent omission, not an intentional act by the court.[6] At the March 25, 2009 hearing, the State pointed out that appendix H to Bizzell's original judgment and sentence, entitled "Community Custody," indicated that the defendant was to be placed on community custody for certain offenses, including assault in the second degree. The court asked the State whether

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[1] Former RCW 9.94A.030(45)(viii) (2002).

[2] State v. Broadaway, 133 Wn.2d 118, 136, 942 P.2d 363 (1997).

[3] State v. Rooth, 129 Wn. App. 761, 771, 121 P.3d 755 (2005) (quoting Presidential Estates Apartment Assoc. v. Barrett,129 Wn.2d 320, 326, 917 P.2d 100 (1996)).

[4] Id.

[5] State v. Klump, 80 Wn. App. 391, 396, 909 P.2d 317 (1996).

[6] Bizzell's original judgment and sentence was entered by the same trial court judge that entered the order at issue in this appeal.

community custody for the assault conviction was mandatory, and determined that it was. When explaining the situation to Bizzell, the court stated, "[I]t is clear that the, at the time of sentencing the Prosecutor did not mark the community custody for Assault Second, did not mark the box. But, it is a mandatory requirement."[7] The court then stated, "I'm satisfied [the amended judgment and sentence] is not a modification. It was an oversight at the time of sentencing. It's a mandatory requirement by statute."[8]

Bizzell's arguments to the contrary are not persuasive. He contends that the trial court's order amounted to an impermissible post-sentencing modification. In general, "a trial court has no inherent authority and only limited statutory authority to modify a sentence post-judgment."[9] But this argument fails to address the trial court's authority to amend an erroneous judgment and sentence under CrR 7.8(a).

Next, Bizzell argues that the Department of Corrections lacked authority under RCW 9.94A.585(7) or RAP 16.18 to ask the court to modify the judgment and sentence more than 90 days after it receives the sentencing information. But there is nothing in the record establishing that the Department made the request. Rather, the State sought to correct the error under RAP 7.8(a).

Finally, Bizzell contends that adding a term of community custody four years after his original judgment and sentence, and on the day before his planned release from custody, was untimely and unfair. However, the court unquestionably had

[7] Report of Proceedings (Mar. 25, 2009) at 10–11.

[8] Id. at 13.

[9] State v. Harkness, 145 Wn. App. 678, 685, 186 P.3d 1182 (2008).

jurisdiction over Bizzell at the time it amended his judgment and sentence. CrR 7.8(a) authorizes the court to correct a clerical error "at any time." Although this error was unfortunately not discovered until the day before Bizzell's scheduled release, his expectation of finality in an erroneous judgment does not control. The trial court has the power and duty to correct an erroneous sentence at the time it is discovered.[10]

Affirmed.

WE CONCUR:

[10] State v. Pringle, 83 Wn.2d 188, 193, 517 P.2d 192 (1973).